

technical work necessary for the development of a comprehensive conservation and management plan for the estuary as specified in the estuary Annual Work Plan for each fiscal year.

**§ 35.9065 Limitations.**

(a) *Management conferences.* The Regional Administrator will not award funds pursuant to CWA section 320(g) to any applicant unless and until the scope of work and overall budget have been approved by the Management Conference of the estuary for which the work is proposed.

(b) *Elements of annual workplans.* Annual Work Plans to be prepared by estuary Management Conferences must be reviewed by the Regional Administrator before final ratification by the Management Conference and must include the following elements:

(1) *Introduction.* A discussion of achievements in the estuary, a summary of activities undertaken in the past year to further each of the seven purposes of a Management Conference specified in section 320(b) of the CWA, the major emphases for activity in the upcoming year, and a schedule of milestones to be reached during the year.

(2) *Funding sources.* A table of fund sources for activities in the new year, including a description of the sources and types (e.g., in-kind contributions to be performed by the applicant) of funds comprising the contribution by applicants or third parties, and the source and type of any other non-Federal funds or contributions.

(3) *Projects.* A description of each project to be undertaken, a summary table of project status listing all activities, the responsible organization or individual, the products expected from each project, approximate schedules, budgets, and the source and type of the non-Federal 25 percent minimum cost share of the aggregate costs of research, surveys, studies, modeling, and other technical work necessary for the development of a comprehensive conservation and management plan for an estuary.

[54 FR 40804, Oct. 3, 1989, as amended at 59 FR 61126, Nov. 29, 1994]

**§ 35.9070 National program assistance agreements.**

The Assistant Administrator for Water may approve the award of NEP funds for work that has broad applicability to estuaries of national significance. These awards shall be deemed to be consistent with Annual Work Plans and Five-Year State/EPA Conference Agreements approved by individual management conferences. The amount of a national program award shall not exceed 75 percent of the approved work program costs provided the non-Federal share of such costs is provided from non-Federal sources.

**Subpart Q—General Assistance Grants to Indian Tribes**

SOURCE: 58 FR 63878, Dec. 2, 1993, unless otherwise noted.

**§ 35.10000 Authority.**

This subpart is issued under the Indian Environmental General Assistance Program Act of 1992 ("the Act"), 42 U.S.C. 4368b.

**§ 35.10005 Purpose and scope.**

(a) This subpart codifies requirements for administering general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs on Indian lands.

(b) 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," establishes consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and Indian Tribal governments. This subpart supplements the requirements contained in 40 CFR part 31, including its provisions for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part by an EPA grant.

**§ 35.10010 Definitions.**

(a) *Indian tribal government.* Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or

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established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)), which is recognized by the United States Department of the Interior as eligible for the special services provided by the United States to Indians because of their status as Indians.

(b) *Intertribal Consortia or Intertribal Consortium.* A partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance under this program.

(c) *General assistance.* Financial assistance provided under this program to Indian tribal governments or to an intertribal consortia or consortium to cover the costs of planning, developing, and establishing the capability to implement environmental protection programs on Indian lands. General assistance may be provided through either a grant or a cooperative agreement in accordance with the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*

### § 35.10015 Eligible recipients.

The following entities are eligible to receive financial assistance under this program:

- (a) An Indian tribal government.
- (b) An intertribal consortium or consortia.

### § 35.10020 Eligible activities.

(a) Activities eligible for funding under this program are those for planning, developing, and establishing capability to implement environmental protection programs, including solid and hazardous waste programs.

(b) Alaska Native village corporations and regional corporations are not eligible to receive general assistance for capacity-building to develop regulatory programs.

### § 35.10025 Limitations.

Financial assistance provided under this program is subject to the following terms and limitations:

(a) No initial grant provided under this program for a fiscal year shall be for an amount less than \$75,000. A grant amendment may be for an amount less than \$75,000.

(b) No single grant awarded under this program may be for an amount exceeding ten percent of total annual funds appropriated under section 11(h) of the Act.

(c) Awards made pursuant to this section shall remain available until expended within the term of the award. The term of an award may exceed one year, but may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient. Receipt of funds under this program shall not preclude an eligible Indian tribal government or intertribal consortium from receiving individual program or project-specific grants or cooperative agreements. Funds provided under this program may be used to supplement other funds provided by EPA through individual program or project-specific grants or cooperative agreements.

### § 35.10030 Grant management.

Procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this program shall be governed by regulations at 40 CFR part 31.

### § 35.10035 Procurement under general assistance agreements.

Procurement of goods or services by recipients funded under this program shall be governed by the following requirements:

(a) *Competition.* To the extent permitted by 25 U.S.C. 450e(b):

(1) The recipient must provide maximum open and free competition.

(2) Recipients must not unduly restrict or eliminate competition.

(b) *Documentation.* Recipients must document all procurement activities with written records that furnish reasons for decisions.

(c) *Cost.*

(1) The recipient must determine that all costs are reasonable.

(2) The recipient must comply with the cost and price analysis requirements in 40 CFR 31.36(f).

(d) *Debarment.* Recipients and contractors must not make any contract at any time to anyone who is on the "List of Parties Excluded from Federal

Procurement or Nonprocurement Programs.”

(e) *Recipient Responsibility.*

(1) The recipient is responsible for the settlement and satisfactory completion of all contractual and administrative issues arising out of contracts entered into under a grant.

(2) The recipient must ensure that all contractors perform in accordance with the terms and conditions of the contract.

(f) *Responsible contractors.* The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract.

(g) *Disadvantaged business enterprises.* The recipient shall comply with the “Small, Minority, Women’s and Labor Surplus Area Business” requirements in 40 CFR 31.36(e).

(h) *Illegal contracts.* Recipients may not award cost-plus-percentage-of-cost or percentage-of-construction-cost contracts.

(i) *Contract provisions.* The recipient must include the following provisions in each contract:

- (1) Statement of work;
- (2) Schedule for performance;
- (3) Due dates for deliverables;
- (4) Total cost of the contract;
- (5) Payment provisions; and
- (6) The following clauses from 40 CFR 33.1030, “Model contract clauses”:

- (i) Supersession;
- (ii) Privity of Contract;
- (iii) Termination;
- (iv) Remedies;
- (v) Audit, Access to Records;
- (vi) Covenant Against Contingent Fees;
- (vii) Gratuities;
- (viii) Responsibility of the Contractor; and
- (ix) Final Payment.

(j) *Subcontracting.* A contractor must comply with the following provisions in its award of subcontracts (these requirements do not apply to subcontractors for the supply of materials to produce equipment, materials, and subcontracts for catalog, off-the-shelf, or manufactured items):

- (1) Section 35.10035(b) Documentation;
- (2) Section 35.10035(c) Cost;

(3) Section 35.10035(d) Debarment;

(4) Section 35.10035(f) Responsible contractor;

(5) Section 35.10035(g) Disadvantaged business enterprises;

(6) Section 35.10035(h) Illegal contracts; and

(7) Section 35.10035(i) Contract provisions.

(k) *Bid protests.* The recipient must establish a procedure for resolving protests which complies with the provisions of 40 CFR 31.36(b)(12).

(l) *Procurement.* Recipients shall not divide any procurements into smaller parts to get under any dollar limit.

(1) If the aggregate amount of the purchase is \$1000 or less, the recipient may make the purchase as long as the recipient demonstrates that the price is reasonable.

(2) If the aggregate amount of the proposed contract is over \$1000 but less than \$25,000, the recipient must obtain and document oral or written price quotations from two or more qualified sources.

(3) If the aggregate amount of the proposed contract is \$25,000 and over but less than \$50,000, the recipient must:

(i) Solicit written bids/proposals from two or more sources who are willing and able to do the work;

(ii) Provide to potential sources a clear and accurate description of the work to be performed;

(iii) Provide the criteria the recipient will use to evaluate bids/proposals;

(iv) Objectively evaluate all bids/proposals submitted; and

(v) Notify all unsuccessful bidders/proposers.

(4) If the aggregate amount of the proposed contract is \$50,000 or over, the recipient must follow the procurement rules in 40 CFR 31.36.

(m) *Non-competitive procurements.* The recipient shall comply with the non-competitive procurement requirements in 40 CFR 31.36(d)(4).

## PART 40—RESEARCH AND DEMONSTRATION GRANTS

### Sec.

40.100 Purpose of regulation.

40.105 Applicability and scope.

40.110 Authority.